

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF REVENUE

In the Matter of the Revocation of the
Sales and Use Tax Permit of Salon St.
John LCC

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck commencing at 9:30 a.m. on Thursday, September 23, 2004, at the Office of Administrative Hearings in Minneapolis, Minnesota. The OAH record closed on October 12, 2004, upon receipt of the last filing by a party.

Wayne Sather, Staff Attorney, Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, MN 55146-2220, represented the Department of Revenue. Craig Ballard, the owner of Salon St. John LLC, 705 First Avenue East, Shakopee, MN 55379-1507 appeared representing himself, without counsel.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Dan Salomone, Commissioner, MN Department of Revenue, 600 North Robert St., St. Paul, MN 55146, to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

STATEMENT OF ISSUE

The issue in this case is whether or not the Respondent has failed to pay sales tax owed to the Department, thereby requiring the revocation of the Respondent's sales tax permit.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Craig Ballard is the owner of Respondent, Salon St. John, a hair salon and spa located in Shakopee, Minnesota. He started the business in 2001 and it has struggled since that time.

2. In the year 2001 the Respondent had total retail and service sales of \$93,596.40, resulting in a sales tax collected and due to the state in the amount of \$664.88.

3. During 2002 the Respondent business was open from January through May, during which time it had retail and service sales of \$28,223.72 resulting in a sales tax due to the State of \$183.60.^[1] The Respondent was closed from June of 2002 through June of 2003 when Mr. Ballard went to cosmetology school.

4. The Respondent was open again from July through December of 2003 during which time it had retail and service sales that resulted in a sales tax due of \$37.03.^[2]

5. During the first four months of 2004 the Respondent had service and retail sales in the amount of \$13,355.95 resulting in a sales tax owed to the State in the amount of \$258.24.^[3]

6. The Respondent has never filed timely sales tax returns with the State. Its liability has been calculated by the Department through Commissioner filed returns which are estimates and then adjusted based upon information supplied by Mr. Ballard. The Respondent also owes the State withholding tax and the Department has made several levies against the Respondent's account to collect the withholding tax due.

7. In a letter dated March 5, 2004 the Department advised the Respondent that it would not pursue revocation of its sales tax permit but that it would begin collection action if formal payment arrangements were not in place by March 12, 2004.^[4]

8. On February 24, 2004 Mr. Ballard proposed a payment plan of \$50.00 per month but was advised that the Department would only accept a two-year payment plan which would require \$211.50 per month payments.^[5]

9. On March 22, 2004, Mr. Ballard offered to pay \$50.00 per month for six months and \$100.00 per month for six months and then increasing to perhaps \$200.00 per month. The Department advised him that his was not acceptable considering his past record.^[6]

10. On April 8, 2004, Mr. Ballard advised the Department that he could only pay \$50.00 per month.^[7]

11. The Department sent the Respondent a Denial of Payment Proposal and Demand for Payment dated April 21, 2004. The letter formally advised the Respondent that it could not accept the proposed payment plan and stated that the Department would proceed with collection action. The total amount due for state sales tax and withholding tax was stated to be \$4,556.91.^[8]

12. On July 8, 2004, the Department advised the Respondent that it intended to revoke its sales and use tax permit unless it paid \$1,201.57 for past sales tax due by August 7, 2004. It also advised the Respondent of its right to a hearing.^[9]

13. In a letter dated August 2, 2004, Mr. Ballard requested a hearing on the revocation of the Respondent's sales tax permit, stating that the Department had not honored his payment agreement with it.^[10]

14. As of the date of hearing the Respondent owed \$1,152.14 in sales tax and \$59.27 in interest for a total amount of \$1,211.41 for tax years 2001 and 2002.^[11]

15. In January of 2004, Mr. Ballard reactivated a sales tax permit in his own name. He then made a payment of approximately \$258.00 for sales tax due to the permit number issued in his own name. The \$258.00 was apparently based upon the sales of Salon St. John during 2004. However, no sales tax returns have been filed for Mr. Ballard for the first half of 2004.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Revenue and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. § 297A.86 and 14.50.

2. The Department gave proper notice of the hearing in this matter to the Respondent and has complied with all relevant substantive and procedural requirements of law and rule.

3. Minn. Stat. § 297A.86, subd. 1 authorizes the Commissioner to revoke a sales tax permit if a person fails to comply with the sales and use tax provisions of Chapter 289A.

4. The Respondent has failed to pay sales taxes as required by Minn. Stat. § 289A.20.

5. As a result of the failure to pay sales taxes owed to the Department, reasonable cause exists to revoke the Respondent's sales tax permit under Minn. Stat. § 297A.86.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner of Revenue revoke the sales and use tax permit of Salon St. John LLC, Minnesota Tax ID #3928166.

Dated this 14th day of October 2004.

S/ George A. Beck

GEORGE A. BECK

Administrative Law Judge

Reported: Taped

No Transcript Prepared

MEMORANDUM

Mr. Ballard has argued in this proceeding that he had a payment agreement with the Department which has not been honored. He has not produced any written agreement, however. Additionally, the history texts recorded by the Department for the Respondent clearly indicate that the Department did not agree to the payment plan suggested by Mr. Ballard because the monthly payment amounts were too low and would not permit recovery of the full amount owed within two years. Mr. Ballard testified that he could afford monthly payments of \$50.00 per month but that if he had to pay \$200.00 per month his business could not survive. That payment plan was rejected by the Department.

For some reason Mr. Ballard reactivated a different sales tax permit in his own name in early 2004 and apparently made a payment towards that permit number during 2004 for sales of Salon St. John. Even if Mr. Ballard is given credit against the total amount owed for that paid to the reactivated permit number, he still remains in debt to the Department. The Commissioner therefore has authority to revoke the sales tax permit unless the taxpayer is able to pay the full amount due or the Department agrees to a payment plan such as that suggested in Mr. Ballard's letter of October 7, 2004.

G.A.B.

^[1] Ex. A, Ex. 5.

[\[2\]](#) Ex. A, Ex. 5.

[\[3\]](#) Ex. B.

[\[4\]](#) Ex. 3.

[\[5\]](#) Ex. 7.

[\[6\]](#) Ex. 7.

[\[7\]](#) Ex. 7.

[\[8\]](#) Ex. 4.

[\[9\]](#) Ex. 1.

[\[10\]](#) Ex. 2.

[\[11\]](#) Ex. 5, 6.